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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ELIZABETH P., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CARMEN P.,

Defendant and Appellant.

D053165

(Super. Ct. No. SJ11676A-C)

APPEAL from an order of the Superior Court of San Diego County, Susan D.

Huguenor, Judge. Affirmed.

Carmen P. appeals an order granting a Welfare and Institutions Code section 388 petition¹ by the San Diego County Health and Human Services Agency (the Agency) requesting there be no visitation between Carmen's daughter, Brittni B., and Carmen's

¹ Statutory references are to the Welfare and Institutions Code.

adopted daughter, Elizabeth P., and denying Brittnei's section 388 petition requesting visitation be reinstated. Carmen argues the court abused its discretion by finding visits between Brittnei and Elizabeth would not be in Elizabeth's best interests. She also maintains suspension of visitation between siblings is contrary to public policy, and the court erred by delegating to the Agency authority to determine when sibling visitation would be appropriate. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Elizabeth was placed with Carmen in 2001 when she was three years old. Carmen later adopted Elizabeth and two younger children, Angelica P. and Manuel P. Carmen has two biological children, Brittnei and an adult son, D.W.

In August 2006 the Agency removed the children from Carmen's custody and petitioned on behalf of then eight-year-old Elizabeth under section 300, subdivision (i), alleging she had been subjected to acts of cruelty, including being forced to stand for hours as punishment, tied to a chair, not allowed to use the toilet until she soiled herself, hit with a belt or a cord, required to sleep and eat on the floor and deprived of food. The Agency also petitioned on behalf of six-year-old Angelica and three-year-old Manuel under section 300, subdivision (j), alleging they were at risk because of the abuse Elizabeth had suffered. On October 11 it filed an amended petition, adding Carmen had caused scarring to the tops of Elizabeth's feet and denied her proper nutrition. The court ordered Elizabeth, Angelica and Manuel detained. Sixteen-year-old Brittnei was not detained.

Subsequently, Carmen's husband, L.W., who had described the abuse of Elizabeth to authorities, recanted his accusations. On February 1, 2007, Carmen submitted to amended petitions, and the court dismissed the subdivision (i) and (j) allegations and found true allegations under section 300, subdivision (b) that the children had been subjected to neglect. The court ordered visitation among the siblings.

However, Elizabeth then began to tell her therapist about how Carmen had abused her. She said Carmen tied her to a chair, hit her with a cord and would make her sit for a long time or stand on a square on the floor and not let her use the bathroom. This would sometimes cause Elizabeth to soil her clothes, and then Carmen would not feed her. Elizabeth reported additional abuse and said she was afraid Carmen would kill her and replace her with another child. She said Brittni and L.W. saw her being mistreated, but did not help her.

After Elizabeth began disclosing the abuse to her therapist and indicated Brittni had been present when Carmen abused her, but had not protected her, the social worker recommended stopping visits between the two sisters. On March 6, 2007, the Agency petitioned under section 388, seeking to modify the court's previous order that provided for sibling visitation. The court found the Agency was entitled to a hearing and suspended visitation pending the hearing.

Based on Elizabeth's disclosures, on April 4, 2007, the Agency filed subsequent petitions under section 342, alleging Elizabeth had been subjected to acts of cruelty under section 300, subdivision (i), and Angelica and Manuel were at substantial risk under section 300, subdivision (j).

On October 18, 2007, the court appointed counsel and a guardian ad litem for Brittni.

Elizabeth was detained in a group home. She continued to participate in therapy, but the social worker reported she had problems with aggressive and inappropriate behavior.

The jurisdictional hearing on the section 342 petitions began on January 14 and ended March 11, 2008. As outlined in detail in a companion writ filed in D052918, the hearing involved many days of testimony from numerous witnesses. Elizabeth's therapist testified Elizabeth suffered from posttraumatic stress disorder and was very clear and consistent in telling about the abuse; she repeated her allegations and never recanted. During her testimony, Elizabeth described how Carmen had abused her. Four social workers supported Elizabeth's account of her life with Carmen. They opined Elizabeth's delay in disclosing the abuse resulted from her fear of Carmen and noted that after Elizabeth was removed from Carmen's custody, she gained significant weight and grew several inches.

Carmen denied abusing Elizabeth in any way. L.W. said his accusations against Carmen were false. Seven-year-old Angelica described a happy family life in Carmen's home and denied Carmen had abused Elizabeth. Brittni and D.W. also denied the allegations and said Carmen was a good mother and did not abuse the children.

At the close of the jurisdictional hearing, after hearing argument from counsel, the court found the allegations true by the standard of clear and convincing evidence. It found Elizabeth's testimony compelling, the social workers credible and L.W.'s recorded

statements also convincing. It found Brittnei's testimony was not credible and noted Carmen's testimony was impeached by other evidence.

On April 2, 2008, Brittnei petitioned under section 388 to change the order suspending visits between herself and Elizabeth. On April 15 and 16, the court admitted additional evidence and heard further testimony regarding disposition. The court denied D.W.'s request for placement of the children with him.² It continued the children as dependents of the juvenile court and found reasonable services had been provided, but Carmen had made no progress. The court terminated her services and set a section 366.26 hearing.

The court then heard testimony on the section 388 petitions. Brittnei testified in support of reinstating her visitation with Elizabeth. She said she and Elizabeth had a loving relationship, Elizabeth liked playing with her, and she missed Elizabeth and would follow the court's rules. She testified she did not believe Carmen had ever abused Elizabeth. A friend of Carmen's testified Elizabeth liked to be with Brittnei and never indicated she was afraid of her.

Social worker Lisa Garcia said she supervised a visit in February 2007, in which Brittnei brought toys for herself and Elizabeth to play with, and Elizabeth appeared to enjoy the visit. Social worker Julie Smith testified she determined visits should be suspended after Elizabeth began disclosing abuse. She said it was her understanding that

² We deny Carmen's request for reconsideration of this court's order denying her request to include in this appeal the issue of the juvenile court's denial of D.W.'s request for placement.

Brittini had been present when Carmen abused Elizabeth, but had done nothing to protect her. Smith opined because of Elizabeth's emotional distress, it was not in her best interests to have visits with Brittini. Social worker Sophia Sanchez opined visits with Brittini would be detrimental to Elizabeth at that time because Elizabeth's therapist said Elizabeth viewed Brittini as an extension of Carmen. Sanchez said Brittini did not help Elizabeth when Carmen tied her to a chair, and L.W. had said that in Carmen's absence Brittini would take on the disciplinarian role and tie Elizabeth to a chair herself. Sanchez said that when she asked Elizabeth if she wanted to see Brittini, Elizabeth answered, "No."

After hearing testimony and argument, the court granted the Agency's section 388 petition, finding changed circumstances and that visits with Brittini would not be in Elizabeth's best interests. It denied Brittini's section 388 petition in which she sought to reinstate visitation.

DISCUSSION

Carmen contends the court erred by suspending visitation between Brittini and Elizabeth. She argues the court abused its discretion by finding changed circumstances and that visits with Brittini would not be in Elizabeth's best interests. She also asserts suspending visitation is contrary to public policy that favors maintaining sibling relationships, and the court erred by delegating authority to the Agency to determine when sibling visitation would be appropriate.

Section 388 provides in part:

"(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the

same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. . . . [¶] . . . [¶]

"(c) If it appears that the best interests of the child may be promoted by the proposed change of order . . . the court shall order that a hearing be held"

In order to gain the relief sought in a section 388 petition, the petitioner must show both a change of circumstances or new evidence and that the change sought is in the child's best interests. (§ 388; Cal. Rules of Court, rule 5.570(e); *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) A petition is liberally construed in favor of its sufficiency. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) The petitioner bears the burden of proof, however, to make both showings. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

"The [section 388] petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) A reviewing court will not disturb a court's discretionary ruling in a dependency proceeding " " "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." " " (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.)

The court did not abuse its discretion by finding the Agency showed changed circumstances and that suspending visitation between the sisters was in Elizabeth's best interests.

The court had initially ordered visitation among the siblings. Within weeks of that order, Elizabeth began disclosing how Carmen had abused her. Elizabeth told her

therapist Brittnei had been present when she was being abused, but had done nothing to protect her. Also, the therapist understood that at times when Carmen was not at home, Brittnei took on the role of disciplinarian and tied Elizabeth to a chair. Elizabeth's disclosures constitute changed circumstances.

The Agency also showed suspending visits was in Elizabeth's best interests. Brittnei contradicted Elizabeth's accounts of abuse and testified she had never seen Carmen abuse Elizabeth. The social worker testified Elizabeth feared for her safety and said she was afraid Carmen would find her, hurt her or even kill her. Elizabeth's therapist diagnosed Elizabeth with posttraumatic stress disorder and said her symptoms included depression, anxiety and fear. The therapist said Elizabeth was emotionally very fragile and having visits with Brittnei would be traumatic for her. Elizabeth's counsel argued Elizabeth saw Brittnei as an extension of Carmen and she needed to feel safe in order to make progress in therapy. The court noted Elizabeth appeared to be extremely vigilant and had said she did not want to visit Brittnei.

We reject Carmen's arguments that the therapist's reports of Elizabeth's descriptions of Brittnei's role were stale. A skilled and practiced social worker, Sanchez testified she began work on the case in July 2007, spoke with the therapist on a regular basis and was the family's social worker through the dependency period. The therapist continued to assess the sibling relationship and at the time of the hearing, was still of the opinion that there should not be visits between Elizabeth and Brittnei. The court did not abuse its discretion by finding that suspending visitation was in Elizabeth's best interests.

Carmen has not shown the order was contrary to the public policy favoring the fostering of sibling relationships. Although we agree that the Legislature has placed an emphasis on maintaining sibling relationships (§ 366.26, subd. (c)(1)(B)(v); *In re Valerie A.* (2007) 152 Cal.App.4th 987, 997-998); the requirement to encourage visitation and contact between siblings does not apply when the court finds "sibling interaction is detrimental to either child." (§ 362.1, subdivision (a)(2).) Here, the court made that finding. Carmen's argument the court prejudicially erred by not expressly making the finding by the required standard of clear and convincing evidence is not persuasive. A court may infer necessary findings if there is sufficient evidence to support them. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 27.) The finding by clear and convincing evidence that visitation with Brittni would be detrimental to Elizabeth is well supported. The trial judge, who presided over a series of evidentiary hearings in this case, opined that Brittni was not credible, the mother had been impeached, the social worker's testimony was convincing, and Elizabeth's compelling. We assume that the very experienced dependency judge considered the appropriate statutory standard when the court expressly found visits with Brittni would be detrimental to Elizabeth.

As to Carmen's argument the court erred by delegating to the Agency discretion to determine when sibling visitation would be appropriate, Carmen has not shown prejudicial error. It is the court's responsibility, not the Agency's, to determine whether visits will occur, but the court may grant to the Agency "discretion to determine the time, place and manner of visits." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.) Here, the court did not give authority to the Agency to reinstate visitation.

Instead, it suspended visitation, but authorized the Agency to renew contact between Elizabeth and Brittnei via telephone, letters, and supervised visits or contact in Elizabeth's therapist's office with concurrence of Elizabeth's attorney that such visits were in Elizabeth's best interests. It thus limited reinstating full visitation unless there were further orders of the court. Carmen has not shown prejudicial error.

DISPOSITION

The order granting the Agency's petition to suspend visitation between Elizabeth and Brittnei and denying Brittnei's petition to reinstate visitation is affirmed.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.